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**DEVELOPMENTS ON KEY ISSUES IN THE DOHA WORK PROGRAMME
IN RELATION TO ACP STATES**

Meeting of ACP Ministers Responsible for Trade
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ABBREVIATIONS

ACP	African, Caribbean and Pacific Group of States
EPAs	Economic Partnership Agreements
EU	European Union
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GSP	Generalized System of Preferences
LDCs	least developed countries
MFN	most favoured nation
NFIDCs	net-food-importing developing countries
SDT	special and differential treatment
SPS	sanitary and phytosanitary
TBT	technical barriers to trade
TRIPS	Agreement on Trade-related Aspects of Intellectual Property Rights
WTO	World Trade Organization

INTRODUCTION

1. International trade plays a pivotal role in the development of the African, Caribbean and Pacific (ACP) Group of States. The Nadi Declaration adopted by the Third Summit Meeting of ACP Heads of States and Governments (Fiji, 16–19 July 2002) stressed the importance of international trade and trade negotiations. It emphasized with respect to the Doha Work Programme, launched in the Declaration adopted on 14 November 2001 by the Fourth WTO Ministerial Conference,¹ that “a well-functioning, rules-based multilateral trading system, whose focus is development, can contribute directly to economic growth, sustainable development and poverty reduction”.² The ACP Heads of State and Government called for a “workable balance between the policy disciplines which help to create transparent, stable and predictable conditions for trade, and the needs of the developing countries and in particular of LDCs and small, landlocked and island countries for special and differential treatment, and policy flexibility to achieve their development objectives and to safeguard their economic interests”. The mainstreaming of development into trade was also highlighted in the Millennium Declaration whereby all Heads of State and Government committed themselves “to an open, equitable, rule-based, predictable and non-discriminatory multilateral trading and financial system”. Also, the Declaration by the Ministers Responsible for Trade of the ACP Group of States on the Fourth WTO Ministerial Conference, adopted on 7 November 2001,³ highlighted, among other things, the urgent need for developmental issues to take centre stage in the WTO.

2. The Doha Work Programme is scheduled to be undertaken over a period of three years, beginning in January 2002 and ending on 1 January 2005. It encompasses negotiations covering essentially: special and differential treatment (SDT); implementation issues and concerns; TRIPS and public health; agriculture; services; market access for non-agricultural products; WTO rules (subsidies, anti-dumping and regional trade agreements); and trade and environment. Treatment of the four Singapore issues (trade and investment, trade and competition policy, transparency in government procurement and trade facilitation) would be agreed upon at the Fifth WTO Ministerial Conference. In addition, a set of issues of interest to ACP States and other developing countries were agreed for discussion, namely; (a) trade, debt and finance, (b) trade and transfer of technology, and (c) small economies. The developments on these issues are not reviewed in this report; however, the main concern of developing countries is that work on these issues continue after the Fifth WTO Ministerial Conference and take up more substantive matters.

3. This report provides a brief assessment of the current situation regarding key issues in the Doha Work Programme of interest to ACP States. It examines in section I some areas of interface between the WTO Agreements and ACP interests, namely WTO waivers, the EU’s enhanced GSP scheme, WTO compatibility of Economic Partnership Agreements and commodities. Section II reviews developments in the Doha Work Programme as regards special and differential treatment; implementation issues and capacities; agriculture; services; market access for non-agricultural products; TRIPS and public health; trade and environment; Singapore issues; and accession to the WTO.

¹ WT/MIN(01)/DEC/W/1, 14 November 2001.

² ACP/28/029/02[Final], 19 July 2002.

³ ACP/61/132/01[Final], 7 November 2001.

I. ACP–EU PARTNERSHIP AGREEMENT AND WTO ISSUES

4. Major challenges facing ACP States in the Doha Work Programme arise from the fact that those States are also engaged in negotiations with the EU for Economic Partnership Agreements (EPAs) under the ACP–EU Partnership Agreement signed in Cotonou, Benin, on 23 June 2000. The trade and trade-related issues under the ACP–EU negotiations can be influenced by the Doha Work Programme. The two parallel sets of trade negotiations require ACP States to ensure that both of them are conducted in a mutually supportive and coherent manner that advances their common interests. Some of these interrelated issues between the ACP–EU negotiations for EPAs and the Doha Work Programme are examined below.

A. WTO waivers on the transitional trading arrangements

5. The ACP–EU Partnership Agreement accepts WTO compatibility as a key principle to be adhered to under new ACP–EU trading arrangements, including the EPAs. This stems in part from long-standing disputes over the WTO compatibility of the previous Lomé Conventions as regards the non-reciprocal preferential treatment for ACP exports into the EU market and special treatment for four commodities (banana, beef and veal, rum, sugar). Adding to the difficulties were the successive legal challenges mounted by some GATT/WTO Members against the EU's regime for the importation, distribution and sale of bananas under the Lomé Convention. Such challenges to the special trade regime accorded to ACP States have, since the creation of the WTO in 1995, attained greater significance in relation to the rules-based nature of the multilateral system with an enforceable dispute settlement mechanism.

6. At Doha, the WTO Ministerial Conference granted two waivers for the EU relating to the ACP–EU Partnership Agreement. One waiver provided derogation from the GATT Article I.1 obligation in respect of preferential tariff treatment for products originating in ACP States. The other covered the European Communities Transitional Regime for Bananas, providing derogation from GATT Article XIII, paragraphs 1 and 2 (non-discriminatory administration of quantitative restriction) in respect of the EU's tariff quota for bananas of ACP origin.⁴ The general waiver applies until December 2007, while the waiver for the banana regime ends in December 2005 when it will be converted into a tariff-only system. This continuation of preferential treatment for ACP exports under the waiver provision under Article IX of the Agreement establishing the WTO underlines its importance and relevance, and hence the need for its preservation.

7. During the consultation on waivers, the possible detrimental effect of preferences on non-ACP developing countries was raised. The Philippines and Thailand objected to the waiver request on the ground that preferential tariff treatment of canned tuna under the ACP–EU preferences for the ACP States (duty-free) would impair their exports that face an MFN duty of 24 per cent. The objection was withdrawn after the EU had given an assurance that it would enter into consultations with them, with the possibility of recourse to mediation in the event of failure to reach mutual agreement. Accordingly, the Philippines, Thailand and the EU requested on 4 September 2002 mediation by the WTO Director-General by reference to, but not specifically invoking, Article 5 of the Dispute Settlement Understanding. The Director-

⁴ *European Communities – The ACP-EC Partnership Agreement: Decision of 14 November 2001* (WT/MIN(01)/15), 14 November 2001; and *European Communities – Transitional Regime for the EC Autonomous Tariff Rate Quotas on Imports of Bananas: Decision of 14 November 2001*(WT/MIN(01)/16), 14 November 2001.

General appointed a mediator, who completed work by 20 December 2002 and whose conclusion the parties agreed to keep confidential.⁵

8. Sugar, another protocol product, is facing a WTO challenge. Brazil, on 27 September 2002,⁶ challenged the EU's export subsidy on sugar.

B. The EU's enhanced GSP scheme

9. A possible alternative to EPAs for those ACP States that decide not to accede to such agreements is an enhanced EU GSP scheme. One challenge, however, is the fact that the option of enhanced GSP, apart from being a unilateral preferential instrument, could face WTO challenges from other developing countries, which would affect its scope and undermine its viability. The EU's enhanced GSP scheme has increasingly been subjected to disputes lately.

10. A challenge was mounted by Brazil in October 2000 against the EU's GSP scheme, which granted discriminatory preferential treatment to soluble coffee imported from Andean countries under the positive incentive scheme for combating drug production.⁷ This dispute ended with a mutually agreed solution between the two parties. Other dispute cases were brought respectively by Thailand on 6 December 2001 and by India on 5 March 2002 with regard to the EU's positive incentive schemes to promote the combating of drug production and trafficking, and labour and environmental standards.⁸ Both complaints were made separately but on similar grounds, arguing that the discriminatory provision of preferences under the EU's positive incentive scheme violated Article I of GATT 1994 and the Enabling Clause (paragraphs 2 (a), 3(a) and 3(c)). Failure to reach a mutually satisfactory solution through consultations led India to request on 9 December 2002 the establishment of a panel.

11. GSP schemes as exceptions to the MFN principle of GATT/WTO are provided under legal cover of the 1979 Enabling Clause. The schemes, however, have to be generalized and provided to all developing countries. Special treatment can be provided, but only to LDCs. Thus, for example, the Everything But Arms (EBA) initiative, as an extension of the EU's GSP focused on LDCs, is compatible with the Enabling Clause in respect of LDCs, and as a follow-up to WTO Ministerial decisions to provide duty-free, quota-free treatment for LDCs. In respect of the enhanced GSP schemes of the EU, the provision of preferential treatment to only a few selected developing countries is being challenged as inconsistent with the Enabling Clause. This experience led the EU to seek a WTO waiver from Article I:1 of GATT 1994 for its positive incentive scheme applicable to countries combating drug production and trafficking, from January 2002 to December 2004.⁹

⁵ WT/DSB/25; WT/GC/66; WT/GC/66/Add.1.

⁶ *European Communities – Export Subsidies on Sugar: Request for Consultations by Brazil* (WT/DS266/1), 1 October 2002.

⁷ *European Communities – Measures Affecting Soluble Coffee: Request for Consultations by Brazil*, WT/DS209/1, 19 October 2000.

⁸ *European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries: Request for Consultations by India*, WT/DS246/1, 12 March 2002.

⁹ *Request for a WTO waiver – New EC special tariff arrangements to combat drug production and trafficking* (G/C/W/328). Proposed eligible countries included Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Pakistan, Panama, Peru and Venezuela. It appears that the waiver request had not been approved as of June 2003.

C. WTO compatibility of EPAs and the Doha Work Programme on Rules

12. The ACP–EU Partnership Agreement provides that EPAs (in trade in goods) progressively remove barriers to trade between the parties to form reciprocal free trade agreements consistent with the relevant WTO provisions. In addition, the negotiations would be as flexible as possible in establishing the duration of a sufficient transitional period, the final product coverage, taking into account sensitive sectors, and the degree of asymmetry in the timetable for dismantling tariffs. It needs to be ascertained whether the flexibility to be provided under EPAs is available under existing WTO rules, notably under GATT 1994 Article XXIV, as regional trade agreements involving developed countries such as those of the EU are notified and examined under such provisions. The ACP Trade Ministers in November 2001 emphasized that “multilateral rules should provide adequate flexibility to enable the ACP States to advance their interests when concluding WTO compatible trading arrangements with the European Union or any country or group of countries”.

13. The WTO compatibility of new EPAs could be affected by the Doha negotiations on WTO rules. Paragraph 29 of the Doha Work Programme called for *‘negotiations aimed at clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements’*, while taking into account *‘the developmental aspects of regional trade agreements’*. In accordance with this mandate, work has been pursued in the Negotiating Group on Rules but so far on the clarification of procedural issues such as when, where and what to notify and examine in regional trade agreements with a view to improving WTO supervisory functions over these agreements in the Committee on Regional Trade Agreements. Some of the proposals in the preparation process for the Seattle WTO Ministerial Conference emphasized the need for WTO disciplines to be more stringent and effective.¹⁰ Negotiations on substantive issues affecting regional trade agreements are likely to take place after the Fifth WTO Ministerial Conference. Several countries have recently submitted proposals in this respect.

14. ACP States, in line with the directive of their Trade Ministers, may need to elaborate proposals on the “developmental aspects” of regional trade agreements, an area yet to be fully explored in the Negotiation Group on Rules, to reflect the flexibility that would be contained in new EPAs. Initial submissions by the EU and Turkey¹¹ have referred to this aspect. They contend that the developmental dimension of regional trade agreements could be catered for under existing WTO rules under GATT 1994 Article XXIV. The required flexibility is available, for example, in the imprecise definition of substantially all the trade coverage (rather than all the trade); the possibility of extension of the transition period for interim agreements to be longer than 10 years in exceptional circumstances; and asymmetry in terms of timetables for tariff reduction and elimination.

15. An ACP approach to the WTO rules negotiations on regional trade agreements needs to take into consideration several issues. First, regional trade agreements formed among developing countries (such as ACP subregional groupings) fall within the purview of the Enabling Clause. This provision does not provide for North–South trade agreements. Second, GATT 1994 Article XXIV does not formally provide SDT for developing countries, and the flexibility within existing provisions as stated above is available to all Members (developed

¹⁰ See, for example, submissions by Australia (TN/RL/W/2 and 3).

¹¹ TN/RL/W/14 and TN/RL/W/32 respectively.

and developing). Third, GATS Article V on integration agreements trade in services, in contrast, already provides additional flexibility for developing countries in meeting its substantive requirements. An ACP approach thus faces the challenge of injecting SDT and flexibility considerations specifically for developing countries into the substantive and procedural requirements of GATT 1994 Article XXIV in respect of the requirement to eliminate duties and other restrictive regulations of commerce with respect to “substantially all the trade” between members (Article XXIV:8(a)(i) and (b)); the nature and duration of the transitional period (Article XXIV:5(c)); and procedural requirements for notification and reporting to relevant WTO bodies and examination by the Committee on Regional Trade Agreements.

D. Commodities in the multilateral trading system

16. Commodity production and trade have a significant bearing on the sustainable livelihoods of the poor and the export and growth performance of ACP States, hence the significance attached to non-reciprocal treatment of trade in agriculture and the commodity protocols under the Lomé Conventions and currently the ACP–EU Partnership Agreement. Given its singular importance to ACP States, this issue deserves consideration by the multilateral trading system. The volatility of commodity prices, the persistent decline in their terms of trade and the resulting trade shocks and decline in income contributed to the increasing difficulty experienced by commodity-dependent ACP States and other developing countries in mobilizing resources to escape the poverty trap.

17. The impact and the implications of long-term decline in real prices of commodities significantly reduce the purchasing power of commodity export earnings. Prices of primary commodities (both minerals and agricultural products) have remained at exceptionally low levels in real terms, particularly since the mid-1990s. For instance, for coffee, producers now receive, in nominal terms, roughly a third of the price they were getting in the mid-1990s. Managing large fluctuations in commodity prices and their impact on incomes is a formidable task for Governments and enterprises, not only in exporting countries but also in importing countries. At the international level, these problems have been further complicated by the emergence of increasingly concentrated market structures and stringent market entry requirements. This is a development gap that the trading system needs to bridge.

18. In the wake of the Doha Ministerial Conference, several ACP commodity-dependent States proposed consideration within the WTO of the adverse impact of declining commodity prices.¹² Also, a suggestion was made by President Jacques Chirac of France at the 22nd France–Africa Meeting (February 2003) on market price support to primary agricultural exports of poor countries as a modality to meet their debt problems. In the meanwhile, as part of the ongoing agricultural negotiations, attention could be given to measures and actions supporting the diversification efforts of ACP States.

¹² At the 44th regular session of the WTO Committee on Trade and Development, a proposal for the Committee to address the adverse impact of declining prices of primary commodities on the trade and development of commodity-dependent countries was made by Kenya on behalf of the United Republic of Tanzania, Uganda, Lesotho and Zimbabwe. This proposal was supplemented with the submission of a joint paper by Kenya, the United Republic of Tanzania and Uganda to the 45th session of the Committee (May 2003). The Committee agreed to conduct informal consultations on a response to the proposal. It was endorsed in the African Trade Ministers’ (June 2003) Mauritius Declaration and Common Position on the Fifth WTO Ministerial Conference.

II. THE DOHA WORK PROGRAMME AND ACP INTERESTS

19. The Doha Work Programme sets a number of deadlines for measuring progress in the negotiations, including providing specific recommendations and solutions. These deadlines apply to the following areas: (a) special and differential treatment – making existing provisions operational and more effective (31 July 2002); (b) implementation issues and concerns raised by developing countries (31 December 2002); (c) agriculture with regard to modalities for further liberalization commitments, including special and differential treatment (31 March 2003); (d) market access for non-agricultural products with regard to modalities for negotiations (31 May 2003); (e) the TRIPS Agreement and public health with regard to implementation of paragraph 6 of the Ministerial Declaration – easing compulsory licensing to allow WTO members with little or insufficient manufacturing capacity to have affordable access to patented medicines (31 December 2002); and (f) dispute settlement with regard to improvements and clarification (31 May 2003).

20. The negotiations have addressed the technical issues in most areas of negotiations, with proposals submitted by Members and draft modalities on the treatment of different issues proposed. However, as at the end of June 2003, none of the deadlines set had been met nor had modalities for market access been adopted.¹³ This poses a major challenge for the Fifth WTO Ministerial Conference in Cancún, Mexico, which is to be a mid-term review for Ministers to take stock of progress and make a realistic assessment of achievements; take decision on some issues, particularly the Singapore issues; and provide political guidance on various issues with a view to instilling fresh momentum to the negotiations in order to conclude them 1 January 2005. The Conference will be faced with a tremendous responsibility to assess and give directions to mainstream trade, development, financial and social infrastructure-related needs and poverty reduction enabling considerations into existing rules and disciplines and any new ones that may be established.

21. Various preparatory events for the Cancun Conference at national, subregional and regional levels and among like-minded groups of countries have been (or are being) held. These include the Dhaka Declaration and Common Position adopted by Trade Ministers of LDCs (31 May–2 June 2003); and the Mauritius Declaration and Common Position adopted by African Union Trade Ministers (19–20 June 2003) and the ACP Trade Ministers' Meeting.

A. Special and differential treatment

22. Special and differential treatment (SDT) provisions in trade agreements are indispensable in order to enable developing countries, including ACP States, to beneficially utilize the trade agreements to promote trade growth and reduce poverty. SDT is a development tool rather than simply an adjustment mechanism for the implementation of the trade agreements. The Doha Ministerial Declaration, in paragraph 44, reaffirmed SDT as an integral part of WTO Agreements and Ministers agreed that all SDT provisions should be reviewed with a view to strengthening them and making them more precise, effective and operational. This work is closely linked to, though separate from, implementation issues and concerns affecting SDT (paragraph 12) as expressed in the Decision on Implementation Issues and Related Concerns.

¹³ However, services negotiations are continuing and modalities on credit for autonomous liberalization have been adopted. Also, a decision was adopted on accession to the WTO by LDCs.

23. ACP Trade Ministers in November 2001 reaffirmed that SDT is a core principle of the WTO and should be incorporated into the architecture of future WTO agreements and rules. They called upon developed countries to commit themselves to ensuring that SDT provisions are made meaningful, operational and responsive to the developmental needs of developing countries. Thus ACP States seek amendments to SDT provisions to enhance their development value, effectiveness, legal enforceability and implementation scope.

24. ACP States have been actively involved in the review of SDT provisions. Two sets of comprehensive proposals submitted at the Special Session of the Committee on Trade and Development by the African Group and LDCs formed the basis of negotiations. They encompass SDT provisions contained in the existing WTO agreements that should be revisited and made more "effective and operational". They address the deficiencies in existing SDT provisions, particularly their non-mandatory, non-operational and "best-endeavour" character, and the lack of developmental value and impact.

25. The WTO Committee on Trade and Development devoted various sessions to the review of SDT provisions in the light of the Doha mandate, but made little substantive progress. Negotiations have yet to be started on how SDT may be incorporated into the architecture of WTO rules. In respect of operationalizing SDT provisions, two deadlines were missed: the first in July 2002 and the second in December 2002, mainly as a result of divergent positions among Members arising from a lack of clear interpretation of the Doha mandate. Thus, in February 2003, the Committee on Trade and Development requested the WTO General Council to "clarify" the Doha mandate. Since then the General Council, under its Chairman, has undertaken consultations in coordination with the Chairman of the Committee on Trade and Development to resolve the hiatus.

26. In April 2003, the Chairman proposed an approach in which all SDT proposals submitted by Members would be addressed without prejudging the outcome. To facilitate consideration and resolution, the 88 Agreement-specific proposals submitted by Members have been split into three categories. Category I proposals comprise 12 proposals already agreed in principle by Members in February 2003, and 26 other proposals which, in the Chair's view, are agreeable. These include provisions of developmental value such as GATT Article XVIII, Part IV, the Enabling Clause, and the Decision on Measures in Favour of LDCs. The outcome of this process would be recommended for action at Cancún.¹⁴ Category II proposals comprise 38 proposals which have been made in areas that are currently under negotiation as part of the Doha mandate or are being otherwise considered in other WTO technical bodies. It is expected that the results of this category could be subject to an early positive outcome. Category III comprises 12 proposals where wide divergences of views exist among Members. The consultation by the Chairman of the General Council has been concentrated on categories I and III issues, whereas some category II issues have been referred to respective WTO bodies for consideration.

¹⁴ In May 2003, additional two proposals were agreed for inclusion in this category. Thus, the total number of agreed-in-principle proposals is 14 as of the end of June 2003.

B. Implementation issues and capacities

27. Concerns about the difficulties faced by developing countries in exercising their rights and obligations within the rules-based multilateral trading system with a vast and growing agenda have been underscored since the first WTO ministerial conference in Singapore in 1996. The implementation issues and concerns pertain, first, to problems which developing countries face in meeting obligations under the WTO Agreements; second, to the non-realization of expected benefits from the trading system, particularly in areas of export interest to them; third, to the lack of effective operationalization of SDT provisions; fourth, to the imbalances of rights and obligations in the WTO agreements and the need for flexibility for developing countries; and fifth, to the implementation, or lack thereof, in letter and in spirit of commitments by other WTO Members.

28. The size and reach of the Doha Work Programme increases tremendously the burden faced by ACP States in the negotiations, coupled with the short period for their conclusion. The results that emerge will, mostly likely, augment the costs of implementation and adjustment to be addressed by ACP States and developing countries in respect of the necessary legislative, regulatory, administrative, procedural and policy adjustments to complete the implementation of current WTO Agreements and any new obligations arising from the Doha work programme, and to take advantage of the new opportunities.

29. Similar concerns have been reiterated by ACP States. The ACP Trade Ministers' Meeting in November 2001 underscored that "any future WTO Work Programme should be based on a development agenda and should take into account the capacities of ACP States to participate effectively in any such Work Programme"; that "any trade rules should fully take into account the development needs of ACP States"; and "inclusion of any new issues will require a fuller understanding of their development implications and agreement by all members". In short, the multilateral trading system must ensure that its rules and disciplines are capable of being substantially implemented and exploited by all its Members, in particular by developing countries. Moreover, any associated costs or adjustment measures for such actions should be borne by the system that creates them.

30. The Doha Ministerial Conference adopted a Ministerial Decision on implementation-related issues and concerns with a view to taking "concrete action to address issues and concerns that have been raised by many developing country members regarding the implementation of some WTO Agreements and Decisions, including the difficulties and resource constraints that have been encountered in the implementation in various areas." It identifies a dozen areas in this regard, including, for example, certain articles of GATT 1994, the SPS Agreement, the TBT Agreement, the Agreement on Textiles and Clothing, the Agreement on Trade-Related Investment Measures, and Rules of Origin. ACP States individually, as a group or as part a group of developing countries, have placed emphasis on the Agreement on Agriculture, the Marrakesh Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-developed and Net Food-Importing Developing Countries (NFIDCs), services, TRIPS and transfer of technology, TRIPS and public health, dispute settlement and SDT. These implementation issues and concerns are considered by developing countries, including ACP States, to form part of development issues, and thus the Doha Work Programme will be incomplete in terms of a development agenda they are not addressed.

31. The Doha Ministerial Declaration's paragraph 12(a) issues¹⁵ were scheduled to be dealt with on a priority basis but that has not been the case so far. While developing countries have put forward as many as 93 issues, little headway has been made. They have been referred to various negotiating bodies, principally the Negotiating Group on Rules, but no progress of note has been made in addressing them. Paragraph 12(b) issues¹⁶ have been discussed in relevant WTO bodies, which submitted their reports to the Trade Negotiation Committee in December 2002. The reports revealed limited progress and a decision on further action remains to be taken. Thus far, there has not been much progress, despite various proposals put forward by developing countries. Hence there is need for collective action by ACP States and developing countries to develop new approaches and mechanisms to monitor and secure real progress in addressing implementation issues.

32. At the national level, "local ownership" of WTO Agreements and their "domestication" into national laws and policies is important. In this context, the national coordination machinery on WTO Agreements is crucial. Such machinery brings together all key stakeholders in the trade policy community to develop national consensus and coordinated guidelines on assessing and monitoring the implementation and notification of WTO Agreements, including their legislation; defining national trade negotiating objectives and pursuing them in international trade negotiations; and defending their acquired rights. It can constitute the kernel of an endogenous institutional capacity for developing countries, including ACP States, to manage at a nationwide level the tasks involved in exercising rights and managing obligations under trade agreements and mobilizing the necessary financial resources to that end from domestic and international sources. Some ACP States have achieved some measure of success in setting up and operating such institutions at the national level, such as the different inter-institutional committees on WTO in a number of African ACP States.¹⁷ Other ACP States have developed regional negotiating forums such as the Caribbean Regional Negotiating Machinery and the SADC Trade Negotiating Forum.

C. Agriculture

33. The Doha Ministerial Declaration sets out the objective and the mandate of the negotiations in paragraphs 13 and 14 for further liberalization in agriculture with SDT as an integral aspect of the negotiations. WTO Members did not meet the deadline for concluding the negotiations on modalities, set for the end of March 2003, on the reduction commitments on the three pillars – market access, export subsidies and domestic support. The conclusion of modalities negotiations is now expected at the Fifth WTO Ministerial Conference on the basis of the draft modalities tabled in March 2003.

34. The 2001 ACP Trade Ministers' Meeting proposals for WTO negotiations on agriculture called for SDT to be an integral part of agricultural negotiations in terms of flexibility for developing countries to develop their agriculture through, *inter alia*, the

¹⁵ Where a specific negotiating mandate in the Declaration exists the relevant implementation issues should be addressed under that mandate.

¹⁶ Other outstanding implementation issues that should be addressed as a matter of priority by relevant WTO bodies, which should report to the Trade Negotiation Committee.

¹⁷ The Inter-Institutional Commission in Charge of Follow-up and Implementation of WTO Agreements in Benin; the National Cell for Follow-up and Coordination of Implementation of WTO in Burkina Faso; the National Committee on WTO in Kenya; the Inter-Institutional Trade Committee in Uganda; and the Inter-Institutional Technical Committee in the United Republic of Tanzania.

advancement of food security, sustainable rural development, rural livelihoods and poverty alleviation, and thereby facilitate a more beneficial participation of ACP States in world agricultural trade. They also called for meaningful market access by, *inter alia*, addressing tariff-free and quota-free market access for LDCs; ensuring consideration and compensation for preference erosion; and elaborating special safeguard measures for developing countries.

35. Tariffs are not the only barrier to market entry. Genuine improvement in market access requires elimination of other sources of distortions, such as export subsidies and other export competition policies (export credits and trading advantages granted to exporting State trading enterprises), as well as trade-distorting domestic support measures used by developed countries for all agricultural products originating from ACP States (while preserving existing preferential arrangements). Issues concerning ACP States include the optimal speed for export subsidy elimination; the possibility of fast-track elimination for products of export interest to ACP States; food aid; and safety net measures to alleviate possible negative impacts from elimination of export subsidies. The negotiating proposals submitted by some LDC ACP States suggest a product-specific approach to reducing trade barriers in the world agricultural market, so as to achieve an early removal of the trade distortion on products of particular export interest to LDCs and ACP States, such as rice, tobacco and cotton.¹⁸ The issue of removal of subsidies on cotton has received much attention and support, including from LDCs and African countries. Addressing non-tariff barriers and other market entry obstacles, including stringent SPS measures, is also important for genuine market access.

36. The phasing out, or application of, strict rules on export competition policies may cause a short-term negative impact on net food-importing developing countries and LDCs, as export subsidies' downward impact on the world prices of basic foodstuffs could have benefited them. The elimination of export subsidies thus needs to be accompanied by an effective safety net measure. At the conclusion of the Uruguay Round, WTO Members agreed on the *Marrakesh Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-developed and Net Food-Importing Developing Countries*. It suggested a set of safety net measures to be implemented by developed countries and other food aid donor countries. This Decision has yet to be implemented to the level satisfactory to LDCs and NFIDCs. Revitalizing the Marrakesh Decision, or an establishment of more operationally effective measures, is needed. The regular session of the WTO Committee on Agriculture established an inter-agency panel to discuss the possibility of setting up a revolving fund to address short-term difficulties for NFIDCs and LDCs in normal levels of commercial imports. The first report from the panel in July 2002 suggested the possibility of an *ex-ante* funding mechanism to be available to LDCs and NFIDCs, but since not all WTO Members agreed to the creation of such a fund the discussions are continuing.

37. The issue of trade preferences poses a difficulty when it comes to the choice of a tariff-cut formula in view of the possible negative impact of substantial MFN tariff cuts on the current actual market access conditions granted on a preferential basis by principal markets for their agricultural exports. The majority of agricultural exports of developing countries, including ACP States, to the premium markets in developed countries are either receiving MFN duty-free access or are entitled to preferential tariffs. The preferential rate is particularly high for agricultural exports from LDCs. To some, which are not competitive suppliers and single- or dual-commodity-dependent countries, preferential market access is essential if they

¹⁸ See, for instance, the proposals submitted by Mali (G/AG/NG/W/99, January 2001) and by Burkina Faso (G/AG/NG/W/185, May 2001).

are to remain in the world market. With preference-granting developed countries being the principal markets for their agricultural exports, substantial MFN tariff cuts may result in deterioration rather than improvement of market access. At the same time, the true value and utilization of preferences are difficult to estimate and ascertain. The product coverage of a preferential scheme may overestimate the actual use of preferential tariffs, which may be limited owing to associated administrative requirements (such as rules of origin). This underscores the need for a tariff-cut approach that aims not only at maximizing global welfare gains, but also at creating welfare gains for all parties involved in the negotiations.

38. The Doha work programme on agriculture can provide new trading opportunities for ACP States, which can be translated into actual gains in market share if a country has adequate supply capacity in terms of quantities (i.e. the capacity to meet the increase in demand) and quality (i.e. the capacity to supply products meeting the quality demanded by consumers in the international market). The need for technical, financial and adjustment assistance in this area becomes critical. This also applies to assistance in addressing SPS measures, and technical and environmental standards, in view of the increasing tendency to set stringent technical, sanitary and phytosanitary standards or labelling requirements for food safety, environmental protection, geographical indications or even animal welfare.

D. Services

39. Negotiations on services have been taking place pursuant to Article XIX (Negotiation of Specific Commitments) of the General Agreement on Trade in Services (GATS) since 2000 and were subsequently incorporated into the Doha Work Programme. The Doha Ministerial Declaration, in paragraph 15, provides for the negotiations to be conducted with a view to promoting the economic growth of all trading partners and the development of developing and least developed countries. The Guidelines and Procedures for the Negotiations (S/L/93), adopted by the Council for Trade in Services on 28 March 2001, was reaffirmed as the basis for continuing the negotiations with a view to achieving the objectives of the GATS as stipulated in the Preamble, Article IV (Increasing Participation of Developing Countries) and Article XIX (Progressive Liberalization). The timetable for negotiations of key elements was established, with initial requests for specific commitments to be submitted by 30 June 2002 and initial offers by 31 March 2003.

40. ACP Trade Ministers emphasized in November 2001 the need for effective implementation of GATS provisions on improving market access in sectors and modes of export interest to ACP countries as provided in GATS Articles IV and XIX.2, and the need for greater liberalization of mode 4 supply of services (movement of natural persons supplying services), especially by developed countries, through the elimination of barriers to market access. The Ministers also called for the provision of credit for autonomous liberalization in services sectors undertaken by ACP countries.

41. The negotiations on services under GATS encompass various areas, including sectoral proposals, the request-offer process, modalities for special treatment for LDCs, mode 4 liberalization, key infrastructural and essential services, assessment of trade in services, credit for autonomous liberalization, domestic regulation and GATS rules. Developing countries, including ACP States, have emphasized four issues: (a) increasing the participation of developing countries in services trade, (b) assessment of trade in services, (c) modalities for recognition of autonomous liberalization, and (d) modalities for the special treatment of

LDCs. A joint submission in this regard by a number of developing countries¹⁹ emphasizes two operational elements, namely facilitation of exports, i.e. enhanced and non-reciprocal access for developing country exports to developed country markets; and flexibility and policy discretion for developing countries in respect of their own markets, i.e. the right to regulate and to pursue developmental objectives, the right to maintain some trade barriers and the right to provide appropriate support to their domestic services providers. The negotiations are expected to provide benchmarks and mechanisms in these areas.

42. The experience to date with the negotiations varies among developing countries. Some developing countries, including ACP States, have submitted *sectoral proposals*. These cover tourism, construction, followed by telecommunications, financial services and distribution, the audiovisual sector, energy, environment and movement of natural persons and computer-related services. India and Pakistan have tabled proposals on movement of natural persons. Some of these proposals were far-reaching in terms of requiring full market access and national treatment, removal of restrictions on foreign equity participation and legal entity, and ownership of assets. Other proposals highlight the fragility of particular service sectors, the need for regulatory reform and proper sequencing in opening the market.

43. In the *request-offer process*, developed countries (EC, Australia, Japan, United States) led the process as few developing countries (Egypt, Kenya and Mauritius) have identified their specific sectoral and modal interests, the barriers to their exports and the impact of developed countries, requests on their services sectors. Developing countries find the evaluation of requests received and the formulation of their own requests and offers a complex task, as it requires countries to determine clearly their national policy objectives and the status of competitiveness of each sector/subsector and evaluate *inter alia* the proper sequencing of liberalization, the capacity of domestic firms, most of which are SMEs, to provide the particular services and whether this capacity would be positively or negatively impacted by further competition in the market. Other elements of evaluation relate to the impact on investment and employment, and access to high-quality, more efficient imports. There is therefore a need at the *national level* to strengthen national mechanisms for coordination within Governments and their Geneva-based trade negotiators, and for consultation with key stakeholders, particularly the private sector (as discussed in paragraph 32). At the *multilateral level*, there is a need to ensure that, as provided by paragraph 15 of the Guidelines and Procedures for the Negotiations, the Council for Trade in Services reviews the process of the negotiations to ensure effective implementation of Articles IV and XIX: 2. Furthermore, the request-offer negotiations might be adjusted in the light of the results of the ongoing assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of the GATS.

44. LDCs, including those from the ACP Group, have submitted several draft proposals on *special treatment for LDCs in the services negotiations*, consistent with the provisions of Article XIX:3. The draft modalities submitted by LDCs aim to ensure that “members should present requests which are compatible with the developmental, economic and financial needs of the LDCs and which are limited in terms of numbers of sectors and modes of supply and scope of commitments”. As at the end of June 2003, no agreement had been reached on the modalities for special treatment of LDCs.

¹⁹ Cuba, Pakistan, Senegal, Sri Lanka, Uganda, United Republic of Tanzania, Zambia and Zimbabwe (S/CSS/W/131).

45. The liberalization of *movement of natural persons supplying services* has been identified by ACP States and other developing countries as crucial to the expansion of their exports and poverty reduction. A small number of developing countries have already submitted requests on mode 4 to their trading partners. The constraints on cross-border movement of service suppliers are one of the most important asymmetries in services trade which need to be addressed by the specific commitments of developed countries. Given that trade conditions for mode 4 are far more restrictive (facing numerous barriers) than for any other mode of supply, a substantially higher level of liberalization needs to be achieved in this mode of supply.²⁰ The present commitments in this mode are limited to intra-corporate transferees, business visitors and professionals/speciality occupations, including those providing services under a service contract. This leaves a small percentage of the commitments covering low-skilled personnel.

46. The negotiations on *key infrastructural and essential services* such as health, education, utilities, transport, cultural and telecommunications services pose an important challenge to ACP States and other developing countries. The challenge of liberalization needs to be measured against the social dimension of services and universal provision of essential services, particularly in low-income developing countries. Discussions on *assessment of trade in services* have been taking place since 1999 and have not yet led to the adoption of conclusions, including in respect of the contribution by GATS to increasing the participation of developing countries. These elements of the assessment by developing countries need to be reflected in the results of the market access negotiations.

47. The Guidelines provide for modalities for *credit for autonomous trade liberalization* to be developed prior to the start of negotiations on specific commitments. These modalities were adopted on 6 March 2003 but do not create any legal obligations nor do they establish any automatic right to credit or recognition. The modalities provide that an autonomous liberalization measure of a Member eligible for credit should *inter alia* have been undertaken by the Member unilaterally since previous negotiations. This includes liberalization as part of structural adjustments programmes under the aegis of the International Monetary Fund or the World Bank but does not include liberalization commitments during the post-Uruguay Round extended negotiations on telecommunications and financial services for which developing countries did not obtain reciprocal benefits.

48. The GATS negotiations provide an opportunity for ACP States to achieve commercially meaningful market access commitments in sectors and modes of interest to them on a priority basis and to devise effective benchmarks for the implementation of Article IV. Other priorities relate to tackling supply constraints, capacity building, and ensuring that

²⁰ Progress in mode 4 requires, as a first step, the clarification of the categories of natural persons. ISCO-88 classification of ILO could provide a solution. Transparency with respect to measures/legislative framework affecting the movement of natural persons is critical for increasing the participation of developing countries in international trade. The movement of service providers could also be facilitated by the use of "GATS visas" or "service supplier visas" that would allow them to move in and out of markets for purposes of business development and service delivery without time-consuming visa requirements. To enhance the competitiveness of developing countries and build confidence, it would be essential that developed countries (a) fully implement existing commitments; (b) bind existing market access as provided in their existing legislation; (c) improve their commitments further by including specific categories of natural persons, including middle- and lower-skilled workers not linked to mode 3, without a requirement for economic needs tests and for periods of stay longer than one year; and (d) recognize qualifications of developing country professionals, notify Mutual Recognition Agreements and effectively admit natural persons from developing countries into developed countries under such mutual recognition agreements. The initial offers which have been so far submitted by developed countries provide only very limited improvements to their existing schedules.

the process of progressive liberalization is properly sequenced domestically in order to maximize benefits. Moreover, the broader developmental aspects of services trade are important, including its contribution to building a competitive goods and services sector, maximization of the overall level of development and reduction of poverty at the national level.

E. Market access for non-agricultural products

49. Paragraph 16 of the Doha Ministerial Declaration provides for negotiations on liberalization of trade in non-agricultural products, while taking fully into account the special needs and interests of developing and least developed country participants, including through less than full reciprocity in reduction commitments, in accordance with the relevant provisions of Article XXVIII bis of GATT 1994. In this respect, the ACP Trade Ministers emphasized in 2001 the need for prior completion of a study process which would examine the effect of previous and any future tariff reductions on the industries of ACP States before engaging in industrial tariff negotiations. They also reiterated the importance to trade preferences, which have to be meaningful, effective and binding and not subject to non-trade conditionalities. They stressed that any new preferences granted should not undermine existing terms and conditions of access provided to ACP States and that assistance should be provided to make full use of and benefit from preferences, including supply-side constraints.

50. ACP States' interests are complex because of the deeper degree of preferences that are available to them. Much will depend on the extent to which they utilize such preferences. Reductions in bound rates that also reduce applied rates (and non-zero preferential rates) will lead to changes in preference margins with possible consequent effects on trade flows (trade diversion). ACP States together with LDCs whose margin of preference is eroded may face negative trade diversion unless their exports are regulated by import quotas (e.g. under the current EU sugar regime). Conversely, they may gain from the erosion of preferences within regional trade agreements and preference schemes of which they are not beneficiaries.

51. Accordingly, ACP States face some dilemmas in ascertaining their interests in the negotiations on non-agricultural market access and in reconciling the options with their own trade and industrial policy strategies. There is a need to take account of the potential gains from MFN trade liberalization, against possible losses from preference erosion and attendant compensation and adjustment measures. In making such judgements, ACP States will need to look at their particular situation, their specific products and main markets, the degree of preference utilization, the effects of regional trade agreements, potential gains in other developing countries, the operation of rules of origin, TBT and SPS measures, other factors affecting market entry, and their own supply capabilities.

52. The current market access negotiations on non-agricultural products mainly concern tariff reductions, while most non-tariff barriers are being covered by WTO rules negotiations. The negotiations, carried on in the Negotiating Group on Market Access, unlike in the Uruguay Round, where the main modality for tariff reduction was the request and offer process, have focused on finding a modality that would meet the criteria set out in the Doha Declaration. An agreement on modalities was to be reached by 31 May 2003.

53. The following WTO Members had submitted proposals on modalities: Bangladesh (on behalf of the least developed countries), Bolivia, Canada, China, Chile, European Union,

Hong Kong (China), India, Japan, Mauritius, Mexico, Mercosur (Argentina, Brazil, Paraguay and Uruguay), New Zealand, Norway, Oman, Qatar, Singapore, Taiwan Province of China, Thailand and United States. African ACP States comprising Ghana, Kenya, Nigeria, the United Republic of Tanzania, Uganda, Zambia and Zimbabwe also presented a single submission on this issue. Clearly defined formula-type proposals have been made by the EU, Japan, the Republic of Korea, the United States, China and India. A “Draft elements of modalities for negotiations on non-agricultural products,” Based on the submissions by Members, was circulated on 15 May 2003.²¹ The draft proved to be highly complex with many undefined elements subject to further negotiations, including the coefficient for reduction formula. WTO Members did not agree on the draft proposal and consequently the negotiations on modalities would continue.

F. TRIPS and public health

54. In addition to Uruguay Round built-in agenda issues being pursued in the TRIPS Council under the review of Article 27.3 (b), the review of implementation of the TRIPS Agreement under Article 71.1 and establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those member States participating in the system (Article 23.4), the following TRIPS issues feature in the Doha Work Programme: (a) TRIPS and public health; (b) implementation issues related to Article 66.2 (paragraph 11 of the Decision on Implementation Issues and Concerns); (c) the relationship between the TRIPS Agreement and the Convention on Biological Diversity; and (d) protection of traditional knowledge and folklore.

55. At the Doha Ministerial Conference, one of the most significant decisions made was on the *Declaration on the TRIPS Agreement and Public Health*. The Declaration requires the provisions of the TRIPS Agreement to be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all. This is important in respect of humanitarian and ethical considerations. In addition to HIV/AIDS, which is the biggest single cause of mortality in developing countries, including ACP States, tuberculosis and malaria as well as other less common killer diseases are also claiming lives. Together all three diseases claimed nearly six million lives in 2001 and led to debilitating illness for millions more.

56. Paragraph 5 (b) of the Declaration further provides that each Member has the right to grant compulsory licences and the freedom to determine the grounds upon which such licences are granted. Moreover, domestic demand could be supplied by parallel imports (governed under the exhaustion of rights doctrine). Paragraph 6 of the Declaration calls for an expeditious solution to the problem of WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector in making effective use of compulsory licensing under the TRIPS Agreement. Several proposals were submitted on this by the African Group, the European Communities, the United Arab Emirates, a group of developing countries and the United States. This solution was to be elaborated by December 2002, and a proposal was submitted on 16 December 2002. The negotiations focused on five key issues,²² among which the scope of diseases was a stumbling block to reaching a consensus on the multilateral solution. Developing countries have resisted any attempt to reinterpret the flexibility of the

²¹ TN/MA/W/35.

²² These key issues include eligible importing and potential supplying Members, disease coverage, safeguard mechanism, the meaning of the term of the “domestic market” and legal mechanism.

Doha Declaration and the TRIPS Agreement, while a few developed countries argue that the “gravity” of public health should be considered in determining access to the solution. Thus, the TRIPS Council did not attain full consensus on this proposal, although a compromise was reached on it among most Members.

57. Given the gravity of the public health crisis in developing countries and LDCs, there is an urgent need to expeditiously adopt a multilateral solution as stipulated by the Declaration on TRIPS and Public Health. Some developed Members announced unilaterally that they would not seek to enforce Article 31(f) of the TRIPS Agreement through the WTO dispute settlement procedure against a WTO Member that exports medicines manufactured under a compulsory licence to a economy suffering grave public health problems associated with HIV/AIDS, malaria, tuberculosis and other infectious epidemics of comparable gravity, including those that may arise in the future.

58. In recognition of difficulties faced by LDCs, WTO Members agreed in Doha to give effect to the extension of the transition period for the LDCs until 2016 with respect to pharmaceutical products in the implementation or application of Section 5 (patents) and Section 7 (protection of undisclosed information).

G. Trade and environment

59. Trade and environment appeared as a new issue for trade negotiations in the Doha Declaration. It contains two environmental issues singled out for negotiations: (a) the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs); and (b) the reduction or elimination of tariff and non-tariff barriers to environmental goods and services.

60. Developing countries, including ACP States, have a major interest in the Doha negotiations and discussions in order to avoid a situation in which potential export gains from tariff liberalization in their premium markets are eroded by mushrooming environmental/health requirements that de facto become non-tariff barriers to their exports. Since the creation of the WTO, notifications on environmental measures under the TBT Agreement have steadily increased, recently accounting for about 12–13 per cent of all notifications. Almost 90 per cent of internationally traded goods are subject to measures taken by Governments for the protection of the environment and human health,²³ and these government-imposed measures represent only a small percentage of all measures taken for environmental and health protection. The vast majority of such measures are voluntary, private-sector-driven standards that contain specific environmental and health requirements for traded goods. In several sectors, environmental and health requirements are increasingly becoming an integral part of product quality.

61. From a developmental perspective, it will be important to recognize trade measures as part of a package of measures in MEAs. Furthermore, developing countries have a key interest in supportive measures such as financial and technical assistance, training and transfer of technology which contribute to reducing adjustment costs for meeting MEA objectives.

²³ For more details, see ITC, A first assessment of environment-related trade barriers, Geneva, November 2001.

62. In respect of negotiations on “the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services” (EGS), the Doha Declaration stipulates that these negotiations should be carried out “with a view to enhancing the mutual supportiveness of trade and environment”. This suggests that “win-win” outcomes that allow both trade and sustainable development gains to be achieved are possible. However, a number of factors need to be taken into account. Developing countries are net importers of EGS based on the common classifications of the sector, although current definitions and classifications involve conceptual problems, and include few goods and services of export interest to developing countries. The expected sustainable development benefits of liberalization in EGS for developing countries are not automatic and depend on factors such as regulatory frameworks, the effects of liberalization on domestic EGS development, and the capacities of those countries to address environmental challenges, implement national policies and meet environmental requirements in export markets. Also, in order to profit from direct export gains, developing countries need to add those EGS in which they have a competitive advantage or are a key source of supply, such as nature and bio-diversity conservation services or bio-degradable natural fibres.

63. The Declaration also tasked the Committee on Trade and Environment with giving particular attention to further work on (a) the effects of environmental measures on market access; (b) situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development; (c) relevant provisions of the TRIPS Agreement; and (d) labelling requirements for environmental purposes.

H. Singapore issues

64. The Singapore issues cover a set of four issues: the relationship between trade and investment, interaction between trade and competition policy, transparency in government procurement and trade facilitation. Work on the examination of the four issues and their relationship to trade is under review by the respective working groups at the WTO. The Doha Declaration stipulates that negotiations on these issues could be launched if “explicit consensus” is reached on “modalities” of negotiations during the Fifth WTO Ministerial Conference. The Chairman of the Doha Conference in his concluding statement indicated that his understanding of “explicit consensus” was that (a) at Cancún “a decision would indeed need to be taken by explicit consensus, before negotiations on trade and investment and trade and competition policy, transparency in government procurement, and trade facilitation could proceed;” and (b) “this would also give each Member the right to take a position on modalities that would prevent negotiations from proceeding after the Fifth Session of the Ministerial Conference until that Member is prepared to join in an explicit consensus”.²⁴

65. Developing countries have emphasized that all of these issues are subject to explicit consensus. Each issue should be treated according to, *inter alia*, its development merit, maturity of consideration, compatibility with WTO rights and obligations, and cost implications for developing countries. Thus further review and study are required on these issues. These concerns notwithstanding and despite a heavy negotiating burden, it is important for developing countries to undertake, from their trade and development standpoint, careful and in-depth consideration of the different substantive aspects such as the scope, coverage and definition issues; alternative solutions and options both within and outside the WTO; and

²⁴ Statement by H.E. Youssef Hussain Kamal, Minister of Finance, Economy and Trade of Qatar, at the closing plenary session of the Doha Ministerial Conference, 14 November 2001.

SDT provisions to ensure adequate policy space and capacity building for developing countries. An initial proposal on Singapore issues was submitted by the EU²⁵ and in response, several developing countries, including some ACP States,²⁶ have reiterated that explicit consensus is a prerequisite for negotiations to start; Singapore issues are not part of the single undertaking of Doha; the work until the Fifth WTO Ministerial focuses on clarifying and reviewing issues; and the term “modalities” needs to be clearly defined.

I. Accession to WTO

66. Since the creation of the WTO, 17 countries²⁷ and one separate customs territory have acceded to it under Article XII of the Agreement Establishing the WTO. As of June 2003, 27 countries²⁸ were in the process of accession,²⁹ including 10 LDCs. As of June 2003, none of the LDCs have acceded since the establishment of the WTO. The Programme of Action adopted by the Third United Nations Conference on the Least Developed Countries recommended a streamlined approach to facilitate the accession of LDCs and contained commitments to support their efforts to accede. The Doha Ministerial Declaration, in paragraph 42, recognized that accession of LDCs remained a priority and agreed to work to facilitate and accelerate negotiations with acceding LDCs. In December 2002, the WTO General Council established a number of guidelines for simplified and streamlined accession procedures, which should be respected and implemented fully in the current accession process to ensure that the entry terms do not subject the acceding countries to WTO-plus obligations and WTO-minus rights and that the SDT rights are not denied.

67. The Doha Ministerial Declaration opened participation in the Doha agenda negotiations to acceding countries. This opening allows them to participate in the Doha negotiations and make various requests to their trading partners, giving them the possibility of transforming the strictly unilateral nature of accession negotiations. In addition, it is important to ensure that commitments that acceding countries would be undertaking as part of their terms of accession are regarded as forming part of their contribution to the outcomes of the Doha negotiations, thus avoiding “paying twice”.

CONCLUSION

68. The Millennium Declaration, adopted by the Heads of State and Government at the United Nations Millennium Summit in 2000, committed “to an open, equitable, rule-based, predictable and non-discriminatory multilateral trading and financial system”. It underscores a development-friendly trading system to ensure advancement of Millennium objectives and goals, in particular those relating to reduction of extreme poverty, hunger and diseases. This

²⁵ WT/GC/W/491.

²⁶ WT/GC/W/501 (Paper by Bangladesh, Cuba, Egypt, India, Indonesia, Kenya, Malaysia, Nigeria, Pakistan, Venezuela, Zambia and Zimbabwe).

²⁷ Albania, Armenia, Bulgaria, Ecuador, Estonia, Former Yugoslav Republic of Macedonia, China, Croatia, Georgia, Jordan, Kyrgyzstan, Latvia, Lithuania, Republic of Moldova, Mongolia, Oman and Panama.

²⁸ In addition the Islamic Republic of Iran applied for accession in September 1996 (WTO, WT/ACC/IRN/1, 26 September 1996). The WTO General Council considered this application in 2001–2003, but did not reach consensus on it. In October 2001, the Syrian Arab Republic applied for accession (WTO, WT/ACC/SYR/1, 30 October 2001), and in December 2001 the Libyan Arab Jamahiriya applied for accession (WTO, WT/ACC/LYB/1, 10 December 2001).

²⁹ This refers to countries whose accession working parties have been established.

commitment was reiterated in the Monterrey Consensus on Financing for Development and the World Summit on Sustainable Development.

69. The Doha Work Programme, by placing development at the heart of multilateral trade negotiations, provided a major opportunity for all stakeholders to contribute to achieving the Millennium Development Goals. The expectation is that such a development-friendly system will enable developing countries, including ACP States, to realize the potential for international trade as an engine of development. All WTO Members will need to work to actually provide the development content. The missed deadlines on issues of interest to developing countries are not merely a matter of not reaching targets on time, but also relate to the substantive intent, direction and balance of the trading system and the Doha package. This would need to be clearly projected into the negotiations from now up until the Fifth Ministerial Conference in Cancún and beyond.

70. There is a close interface between ACP–EU development and trade cooperation, particularly the negotiations on Economic Partnership Agreements, and the Doha Work Programme. ACP and EU States have agreed that new ACP–EU trading arrangements would be WTO-compatible. The preferred status of the ACP States in EU markets means that tariffs and quantitative restrictions on agriculture and industrial goods are not an issue for ACP States. The more important issue is market entry barriers, supply constraints, and technological and entrepreneurial weaknesses. The market access issue, from the perspective of ACP States, will be the reciprocal liberalization of their markets to the EU, and how this can be undertaken in a manner consistent with the development objectives of ACP States and the ACP–EU Partnership Agreement.

71. In this regard, the preservation of the *acquis* of the Lomé Convention, the development of regional economic groupings of ACP States, the solidarity of the larger ACP Group and the integrated development of trade and development of ACP States are essential. Important considerations in the ACP–EU EPA negotiations and the Doha Work Programme concern special and differential treatment and flexibility that ACP States can enjoy, including the extent to which less than full reciprocity (or non-reciprocity) will be accepted, interpreted and applied in trade in goods and services and the accompanying rules. Market access negotiations need to be linked directly with provisions for capacity building, adjustment support and supply development in the ACP–EU Partnership Agreement. Market access and entry, and supply and adjustment capacities, need to be addressed together.

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